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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 310

[Docket No. FSIS-2018-0005]

RIN: 0583-AD68

Eliminating Unnecessary Requirements for Hog Carcass Cleaning

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations by removing the provision requiring the cleaning of hog carcasses before any incision is made preceding evisceration. This provision, although focusing on the presentation of carcass dressing defects, impedes the adoption of more efficient, effective procedures under other regulations to ensure that carcasses and parts are free of contamination. Also, the provision is no longer necessary because other regulations require carcass cleaning, the maintenance of sanitary conditions, and the prevention of hazards reasonably likely to occur in the slaughter process.

DATES: Comments must be received by **(INSERT DATE 60 DAYS FOLLOWING PUBLICATION)**.

ADDRESSES: FSIS invites interested persons to submit comments on FSIS-2018-0005. Comments may be submitted by one of the following methods:

- Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to <http://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- Mail, including CD-ROMs, etc.: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250-3700.

- Hand- or courier-delivered submittals: Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250-3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2018-0005. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

Docket: For access to background documents or comments received, call (202)720-5627 to schedule a time to visit the FSIS Docket

Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250-3700.

FOR FURTHER INFORMATION CONTACT: Roberta Wagner, Assistant Administrator, Office of Policy and Program Development, FSIS; Telephone: (202)-205-0495.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Meat Inspection Act (21 U.S.C. 601-695), FSIS carries out an inspection program to ensure that carcasses, parts, and products of amenable species of livestock are wholesome, not adulterated, and properly marked, labeled and packaged. Among other provisions of the Act is a requirement for post-mortem inspection of livestock carcasses, including swine carcasses (21 U.S.C. 604). This inspection must be completed before the carcasses or the meat or meat food products derived from them are moved to further processing (21 U.S.C. 605) and preparation for commerce (also under inspection) (21 U.S.C. 606(a)).

Under the Act, the Agency may prescribe rules and regulations of sanitation under which establishments must be maintained (21 U.S.C. 608). More generally, the Agency may issue rules and regulations necessary for the efficient execution of the Act's provisions (21 U.S.C. 621).

Accordingly, FSIS and its predecessors have issued regulations governing inspection. The regulations include post-mortem inspection requirements, criteria for determining whether or not meat or meat food products are adulterated, and requirements for inspected establishments to develop and maintain Hazard Analysis and Critical Control Point (HACCP) plans and Sanitation Standard Operating Procedures (Sanitation SOPs).

Among the post-mortem inspection regulations is one titled "Cleaning of hog carcasses before incising" (9 CFR 310.11). This regulation states, "All hair, scurf, and dirt, including all hoofs and claws, shall be removed from hog carcasses and the carcasses thoroughly washed and cleaned, before any incision is made for inspection or evisceration." The carcass cleaning that the regulation is referring to typically begins in an official slaughter establishment after stunning, bleeding, and scalding, and continues after gambrelling¹ and singeing, along with trimming of jowls, lips, and eyelids, but before dropping of the head. This regulation has helped to ensure that carcasses are clean when presented for post-mortem inspection.

Another post-mortem-inspection regulation, 9 CFR 310.18, on "Contamination of carcasses, organs, or other parts," addresses the prevention and removal of contamination from carcasses

¹Suspending the carcass by the legs from a metal frame or hanger - a gambrel.

(before or after incision), organs, and other parts. Under this regulation, any contamination remaining post-incision or post-evisceration is removed.

Regulations on Sanitation SOPs (9 CFR 304.3, 416.12-17) require establishments to have written procedures to ensure sanitary operating conditions that will prevent contamination and adulteration of products. The HACCP regulations (9 CFR 304.3, and 417, particularly 9 CFR 417.2, and 417.4) require establishments to have HACCP plans to prevent or reduce to acceptable levels any hazards reasonably likely to occur. These include any contamination hazards that are not already minimized through the implementation of Sanitation SOPs or other prerequisite programs. FSIS and members of the regulated industry have found that the regulation on cleaning hog carcasses before incising, 9 CFR 310.11, may impede the application of alternative, more efficient, procedures for removing hair, scurf, and dirt after the first incision preceding the dropping of the head and evisceration.

Because the current regulation is prescriptive and requires dehairing before evisceration, the establishment has limited flexibility. Removing the regulation will enable an establishment to remove hair, scurf, nails, and hooves at other points in the process and to do so in a way that may prove to be more efficient. For example, removing hair from the snout when

the snout is on a table, beyond the point where the first incision is made, and the snout is also not moving on the line is more efficient than trying to remove the hair on a moving carcass with the head still attached.

These more efficient procedures also ensure that carcasses will be free of contamination when moved within an establishment to, or shipped in commerce for, further processing. The alternative procedures can be incorporated in a prerequisite program aimed at preventing contamination. When executed and documented, the program can support an establishment's hazard analysis (as per 9 CFR 417.5(a)(1)) and HACCP plan. At times, the Agency has, under an exemption regulation, at 9 CFR 303.1(h), granted waivers from the requirements of 9 CFR 310.11 to permit the use of the alternative procedures.

For example, carcass defects and blemishes too small to be detected during slaughter can be removed during off-line inspection or during further processing. So, some establishments are using alternative procedures for removing, after carcass dressing, hairs that are not readily visible. Such defects may be regarded as finished carcass defects and not as contamination or sanitary dressing defects. Singed eyelashes remaining on the carcass or isolated, individual, hairs on the head or face of the ham may be found after the first incision. Such defects may be removed effectively when pulling the snout

and when "facing" (trimming the excess fat along the inside surfaces of) hams in the cutting room, where carcasses are broken down in a sanitary manner into standard wholesale or retail cuts. Remaining hoofs and claws (i.e., nails) can be removed after the first incision or later in processing when feet are discarded or not saved for food in the cutting room. FSIS has found the performance of establishments using the alternative procedures to be satisfactory.

Establishments using the alternatives are listed on the FSIS Web site at:
https://www.fsis.usda.gov/wps/wcm/connect/188bf583-45c9-4837-9205-37e0eb1ba243/Waiver_Table.pdf?MOD=AJPERES

By relying on the authority of 9 CFR 310.18 and the Sanitation SOP and HACCP regulations, establishments have the flexibility to implement these or other procedures to remove any defects during the stages of slaughter and further processing that follow evisceration. They can make their operations more efficient and effective without compromising food safety. Therefore, these other regulations, and establishment compliance therewith, make 9 CFR 310.11 unnecessary.

FSIS is therefore proposing to remove 9 CFR 310.11 from the regulations.

Modernization of Swine Slaughter Inspection

On February 1, 2018, FSIS proposed a new regulation to modernize swine inspection (83 FR 4780). Among other things, in this rule, FSIS is proposing to require that all official swine slaughter establishments develop, implement, and maintain in their HACCP systems written procedures to prevent the contamination of carcasses and parts by enteric pathogens, fecal material, ingesta, and milk throughout the entire slaughter and dressing operation. These procedures must include sampling and analysis for microbial organisms to monitor process control for enteric pathogens, as well as written procedures to prevent visible fecal material, ingesta, and milk contamination. In addition, FSIS is proposing to require that all official swine slaughter establishments develop, implement, and maintain in their HACCP systems written procedures to prevent contamination of the pre-operational environment by enteric pathogens. Therefore, in the modernization proposed rule, FSIS is proposing additional requirements that, if finalized, will further prevent contamination of swine carcasses. If finalized, this rule would provide more support for eliminating section 310.11, as is proposed above.

Executive Orders 12866 and 13563, and the Regulatory Flexibility Act

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety benefits, distributive impacts, and equity). Executive Order (E.O.) 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated as a “non-significant” regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

Economic Analysis

Expected Cost Savings and Benefits Associated With the Proposed Rule

This proposed rule is expected to reduce swine slaughter labor costs by approximately \$11.81 million annually. These savings are due to industry’s practice of dedicating labor pre-incision, solely to comply with 310.11. Under the proposed rule, this labor would no longer be needed because the work can be accomplished by existing labor located post-incision. FSIS’s labor cost savings estimate assumes that the labor affected by

the proposed rule is equivalent to that in the Bureau of Labor Statistics' (BLS's) slaughtering and meat-packing occupational category, for which the industry annual wage is \$27,140². The Agency seeks comment on this assumption. Applying a benefits-and-overhead factor of 2 brings this occupation's total annual labor costs per position to \$54,280 (\$27,140 x 2).

The number of positions affected at each establishment depends on the establishment's size, slaughter volume, number of lines and shifts it operates, and days of operation. Large³ swine establishments are thought to dedicate from one to three full-time positions per line and per shift to comply with 9 CFR 310.11; while small⁴ high-volume⁵ establishments dedicate between one and two positions for the same purpose. Small low-volume and very small⁶ establishments are thought to dedicate between one quarter-time and one full-time position to compliance with this regulation. The Agency seeks comment on these labor-demand estimates.

² BLS Occupational Employment Statistics (OES) May 2016 National Industry-Specific Occupational Employment and Wage Estimates for North American Industrial Classification (NAICS) code 311600 (Animal Slaughtering and Processing) <https://www.bls.gov/oes/current/naics4_311600.htm> Last Modified 3/31/2017 Accessed on 1/19/2018

³ A large establishment has 500 or more employees.

⁴ A small establishment has between 10 and 499 employees.

⁵ 9 CFR 310.25(a)(2)(v) defines very low volume swine slaughter establishments as slaughtering 20,000 head annually or fewer. For the purposes of this analysis, FSIS has labeled swine establishments that annually slaughter more than 20,000 head per year as high-volume establishments.

⁶ A very small establishment has less than 10 employees or less than \$2.5 million in annual sales.

According to data from the Agency's electronic Public Health Inspection System (PHIS), 479 very small establishments, 54 small low-volume establishments, 51 small high-volume establishments, and 23⁷ large swine establishments would be affected by this rule. This analysis takes into consideration the fact that some large and small high-volume establishments operate multiple lines and multiple shifts. This analysis assumes that all other establishments operate one line and one shift per day. Data from PHIS also show that, on average, large establishments annually operate 266 days, small high-volume establishments 239 days, small low-volume establishments 95 days, and very small establishments 67 days. The proposed rule is expected to lead to a reduction in industry positions at these establishments; see table 1. Table 2 provides the estimated labor cost savings from the proposed rule, given the expected labor costs, number of positions, and days of operation. The annual cost savings range from \$5.27 million to \$19.03 million, with a mid-point of \$11.81 million.

Table 1: Estimated Industry Labor Reductions from Removing 310.11

| Size of Est | No. Of | Number of Positions Reduced |
|-------------|--------|-----------------------------|
|-------------|--------|-----------------------------|

⁷While there are 28 large swine establishments, five are operating under waivers from 9 CFR 310.11 and are not expected to experience a decrease in their demand for labor resulting from implementation of this proposed rule.

| | Establishments* | Low | Medium | High |
|-------------------|-----------------|-----|--------|------|
| Large | 23 | 37 | 74 | 111 |
| Small High Volume | 51 | 26 | 77 | 102 |
| Small Low Volume | 54 | 14 | 27 | 54 |
| Very Small | 479 | 120 | 240 | 479 |
| Combined | 607 | 196 | 417 | 746 |

*Public Health Information System (PHIS)

Table 2: Labor Wage Cost (Savings) from Removing 310.11, 2016

| Size of Est | No. Of Establishments* | Total Annual Labor Cost (Savings) (M\$) ** | | |
|---|------------------------|---|-----------|-----------|
| | | Low | Medium | High |
| Large | 23 | (\$2.06) | (\$4.11) | (\$6.17) |
| Small High Volume | 51 | (\$1.27) | (\$3.82) | (\$5.09) |
| Small Low Volume | 54 | (\$0.27) | (\$0.54) | (\$1.07) |
| Very Small | 479 | (\$1.68) | (\$3.35) | (\$6.7) |
| Combined | 612 | (\$5.27) | (\$11.81) | (\$19.03) |
| Annualized Costs (Savings), Over 10 Years (M\$) | | | | |
| Assuming a 3% Discount Rate | | (\$5.27) | (\$11.81) | (\$19.03) |
| Assuming a 7% Discount Rate | | (\$5.27) | (\$11.81) | (\$19.03) |

*Public Health Information System (PHIS)

** Wage estimates were sourced from BLS OES May 2016 National Industry-Specific Occupational Employment and Wage Estimates for NAICS code 311600

<https://www.bls.gov/oes/current/naics4_311600.htm> Last Modified 3/31/2017. Accessed on 1/19/2018.

Expected Costs Associated with this Action

The proposed rule has no expected costs associated with it.

Expected Effects on Small Entities:

The FSIS Acting Administrator has made a preliminary determination that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The expected labor cost reductions associated with the proposed rule are not likely to be large enough to significantly impact an entity. Further, the proposed rule does not have any cost increases.

Executive Order 13771

Consistent with E.O. 13771 (82 FR 9339, February 3, 2017), FSIS has estimated that this proposed rule would yield cost savings. Therefore, if finalized as proposed, this rule is expected to be an E.O. 13771 deregulatory action.

Paperwork Reduction Act

No new paperwork requirements are associated with this proposed rule.

Executive Order 12988

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) No retroactive effect will be given to this rule; and (3) Administrative proceedings will not be required before parties may file suit in court challenging this rule.

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, et seq.) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Additional Public Notification

FSIS will announce this proposal on-line through the FSIS Web page located at:
[http://www.fsis.usda.gov/regulations & policies/Proposed Rules/index.asp](http://www.fsis.usda.gov/regulations%20&%20policies/Proposed%20Rules/index.asp). FSIS also will make copies of this Federal Register publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, Federal Register notices, FSIS public meetings, and other types of information that could affect or

would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <http://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

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http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf, or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail:

U.S. Department of Agriculture
Director, Office of Adjudication
1400 Independence Avenue, SW
Washington, DC 20250-9410

Fax: (202) 690-7442

E-mail: program.intake@usda.gov

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

List of Subjects in 9 CFR 310

Animal diseases, Meat inspection.

For the reasons set out in the preamble, FSIS is proposing to amend 9 CFR Part 310 as follows:

PART 310 - POST-MORTEM INSPECTION

1. The authority citation for Part 310 continues to read as follows:

Authority: 21 U.S.C. 601-695; 7 CFR 2.18, 2.53.

§310.11 [Removed and reserved]

2. Section 310.11 is removed and reserved.

Done, at Washington, D.C..

Paul Kiecker

Acting Administrator.

[FR Doc. 2018-10488 Filed: 5/15/2018 8:45 am; Publication Date: 5/16/2018]